

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES E. ROSE	:	
	:	CIVIL ACTION
v.	:	
	:	NO. 01-13
COUNTY OF LEHIGH,	:	
THERESA RENTKO, DENNIS	:	
STECKEL, JESSICA LOWERY,	:	
BARBARA BUCHANAN,	:	
JUDITH A. DEXTER, JOHN DOE	:	
and JANE DOE	:	

MEMORANDUM ORDER

This is a civil rights action arising from a custody dispute over plaintiff's daughter, Conciata Gabriella Rose. Plaintiff alleges that defendants Rentko, Steckel, John Doe and Jane Doe, Lehigh County police detectives, in concert with plaintiff's former girlfriend, defendant Lowery, her mother, defendant Buchanan, and defendant Dexter, a Lehigh County custody hearing officer, violated plaintiff's constitutional rights against compulsory self-incrimination and double jeopardy, his rights to equal protection and due process, and his right to custody of his daughter. He seeks monetary damages of \$1,000,000 from each defendant and an injunctive order prohibiting defendants from interfering with his personal life and ongoing child custody proceedings regarding his daughter.

Presently before the court are the motions to dismiss of defendants Lehigh County, Rentko and Steckel (the County defendants) and of defendant Dexter. Defendants Lowery and Buchanan have filed a motion for summary judgment.

Plaintiff's complaint is essentially an elaborate and vitriolic tale of persecution that can be summarized as follows.

Plaintiff and defendant Lowery are former domestic partners. Their one daughter, Conciata Gabriella Rose, was born in March 2000. On April 19, 2000, plaintiff and Ms. Lowery signed a child custody agreement which placed primary physical custody of Conciata with plaintiff. On July 17, 2000, defendant Lowery filed a Protection from Abuse ("PFA") complaint against plaintiff. This generated a number of state court proceedings and appeals regarding abuse, custody and visitation which are ongoing.

Plaintiff alleges that defendant Lowery, with the assistance of her mother, lied to Lehigh County officials and judges about abuse she suffered at plaintiff's hands in an effort to obtain primary custody of Conciata. He alleges that defendant Lowery also falsely implicated him in criminal conduct to the County defendants who then encouraged Ms. Lowery to repeat these accusations at custody proceedings to persecute plaintiff and deny him custody of his daughter because he is a black male. He alleges that the County defendants provided false testimony concerning alleged past and ongoing criminal activity of plaintiff. Plaintiff asserts that as a result of these false accusations, state court judges rendered several erroneous

unfavorable rulings in the custody and visitation proceedings.<sup>1</sup>

Defendant Dexter's motion is based on absolute judicial immunity. The County defendants predicated their motion on the Rooker-Feldman doctrine and the abstention principles articulated in Younger v. Harris, 401 U.S. 37 (1971) and its progeny. Defendants Lowery and Buchanan also have based their motion on Rooker-Feldman and Younger.<sup>2</sup>

Plaintiff's claims against defendant Dexter are predicated on allegedly incorrect rulings made by her as a Custody Hearing Officer against plaintiff because of alleged discriminatory animus. As a judicial or quasi-judicial officer, defendant Dexter is absolutely immune from suit for her judicial or quasi-judicial acts in matters committed to her jurisdiction, regardless of motive. See Forrester v. White, 484 U.S. 219, 225 (1988); Stump v. Sparkman, 435 U.S. 349, 355-56 (1978); Gallas v. Supreme Court of Pennsylvania, 211 F.3d 760, 768-69, 772 (3d Cir. 2000). Plaintiff's claims against defendant Dexter will be dismissed.

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<sup>1</sup>Plaintiff also alleges that defendant Rentko encouraged one of plaintiff's former girlfriends to file a Protection from Abuse claim against him in 1998 and appeared at a custody proceeding in 1998 to give unfavorable testimony regarding plaintiff's custody of a daughter from another relationship. It appears that this is offered for background and not with an intent to assert a discrete claim for such alleged conduct which would be barred by the two-year statute of limitations.

<sup>2</sup>Although these defendants filed an answer and then this motion styled as one for summary judgment, their argument is based on the face of the pleadings. Nothing has been submitted in connection with this motion which would alter a Rooker-Feldman or Younger analysis and it is in effect one for judgment on the pleadings.

The Rooker-Feldman doctrine precludes federal district courts from entertaining a constitutional claim that is inextricably intertwined with a state court judgment where the claim is predicated on an allegation and would entail a determination that the judgment was erroneous. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483-84 n.16 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996); Port Auth. PBA v. Port Auth. of NY & NJ, 973 F.2d 169, 177-78 (3d Cir. 1992).

A plaintiff may not obtain federal review of adverse state court decisions by casting his complaint as a civil rights action. See Ritter v. Ross, 992 F.2d 750, 754 (7th Cir. 1993); Worldwide Church of God v. McNair, 805 F.2d 888, 893 (9th Cir. 1986) (Rooker-Feldman applies where court cannot consider constitutional claims without conducting review of state court determinations). See also Anderson v. Colorado, 793 F.2d 262, 263 (10th Cir. 1986) (applying Rooker-Feldman in action related to state custody proceeding); Behr v. Snider, 900 F. Supp. 719, 725 (E.D. Pa. 1995) (same); Fuller v. Harding, 699 F. Supp. 64, 66-67 (E.D. Pa. 1988) (applying Rooker-Feldman to §§ 1983 and 1985(3) damage claims and claim for injunction to prohibit future interference at custody proceedings); Stypulkowski v. Stypulkowski, 2000 WL 1456739, \*2 (E.D. Pa. Sept. 29, 2000); Weinstein v. Lasover, 1993 WL 475505, \*3 (E.D. Pa. Nov. 12, 1993).

The entire thrust of plaintiff's complaint is that he was injured by erroneous state court rulings caused by defendants' false testimony which influenced a judge into "ignoring statutory laws that he is bound by." In making rulings plaintiff complains about, a state judge decided questions regarding the credibility of Ms. Lowery's account of abuse and this determination was affirmed by the Superior Court. A claim predicated on the incredibility of Ms. Lowery necessarily impugns and challenges the correctness of the decision rendered. Plaintiff is asking the court to remedy "judicial oppression" with an injunctive "order to insure the Lehigh County Court conducts its hearings without further violating plaintiff's rights." This would involve an intimate review of the conduct and decisions of a state court and for plaintiff to prevail, a determination that they were erroneous and violative of his rights.<sup>3</sup>

Plaintiff's claims are barred by Rooker-Feldman. A dismissal and stay on Younger abstention grounds would also be appropriate.

The Younger abstention doctrine is based upon a strong federal policy of non-interference with ongoing state court proceedings. See Moore v. Sims, 442 U.S. 415, 423 (1979); Weinstein, 1993 WL 475505 at \*2. Although Younger was conceived

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<sup>3</sup>Plaintiff's reliance on Nollet v Justices of Trial Courts of Mass., 84 F. Supp. 2d 204 (D. Mass. 2000) is misplaced. Nollet involved a facial challenge to the constitutionality of a state statute and not an attack upon any particular state court judgment. See id. at 208.

to preclude federal review of state criminal proceedings, its holding has been extended to state civil and administrative proceedings. See Moore, 442 U.S. at 423; Huffman v. Pursue, Ltd., 420 U.S. 592, 607 (1975).

The doctrine applies when there are ongoing state judicial proceedings which implicate important state interests and afford an adequate opportunity to raise pertinent federal claims. See Port Auth. PBA, 973 F.2d at 173.

There are ongoing state judicial proceedings involving custody, visitation, and a claim of physical abuse. Domestic relations matters are traditionally an area of state concern. See Moore v. Sims, 442 U.S. at 435; Magaziner v. Montemuro, 468 F.2d 782, 787 (3d Cir. 1972); Neustein v. Orbach, 732 F. Supp. 333, 339 (E.D.N.Y. 1990); Fuller v. Harding, 699 F. Supp. 64, 67 (E.D. Pa. 1988). Plaintiff may raise his claim that he has been unconstitutionally denied child custody and visitation in the state courts. See Moore, 442 U.S. at 430 (state courts plainly competent to adjudicate federal constitutional claims). See also Kramm v. Silvestri, 1997 WL 125744, \*2 (E.D. Pa. March 17, 1997) (state courts competent to hear civil rights claims arising from custody proceedings); Neustein v. Orbach, 732 F. Supp. at 342 (same).

The adjudication of plaintiff's claims would interfere substantially with ongoing state proceedings. Central to his claims is a determination of whether witnesses lied about matters on which they will give further testimony at proceedings directed by the Superior Court. Plaintiff seeks to enjoin defendants,

including the state court complainant, from participating in state proceedings in a manner deemed objectionable by plaintiff. Plaintiff seeks an order directing the state court on how to conduct further proceedings. He is seeking discovery from state judges about their decisionmaking regarding matters still in state court litigation.

It is not at all clear, however, that plaintiff could assert a § 1983 claim for damages in the context of a custody or abuse from protection proceeding against someone who is not a party to such proceeding. In these circumstances, it would be appropriate to dismiss plaintiff's injunctive claims and stay proceedings on the damage claims. See Deakins v. Monaghan, 484 U.S. 193, 202 (1988); O'Neill v. City of Philadelphia, 32 F.3d 785, 793 (3d Cir. 1994) (directing district court "to dismiss" injunctive claim where Younger applied); Crane v. Fauver, 762 F.2d 325, 329 (3d Cir. 1985) (stay rather than dismissal of § 1983 damage claim appropriate where equivalent relief not available in ongoing state proceeding implicating Younger).

The court does not suggest that plaintiff has otherwise presented cognizable damage claims. Witnesses, whether private citizens or law enforcement officials, are immune from civil damage claims based on their testimony in a judicial proceeding. See Briscoe v. LaHue, 460 U.S. 325, 345-46 (1983); McArdle v. Tronetti, 961 F.2d 1083, 1085-86 (3d Cir. 1992). Judge Gardner's decision to admit evidence of plaintiff's criminal record at a visitation hearing was clearly not a violation of the double jeopardy clause, as plaintiff claims, let alone one for which any

defendant would be liable. Defendant Dexter's denial at a custody hearing of plaintiff's objection to questions about his income and assets clearly was not a violation of his right against compelled self-incrimination, let alone one for which Lehigh County would be liable as plaintiff asserts. If, as plaintiff seems to suggest, answers to these questions may have implicated him in criminal activity, he could have asserted the privilege against self-incrimination. There is no allegation that he did so and was then nevertheless forced to answer. There are no factual allegations regarding John Doe. The only factual allegation against Jane Doe is that she is a detective who escorted Ms. Lowery at a court proceeding. There is no respondeat superior liability under the Civil Rights laws and plaintiff has set forth no other basis for imposing liability on the County.

**ACCORDINGLY**, this                      day of September, 2001, upon consideration of the Motion of defendant Dexter to Dismiss (Doc. #5); the Motion of defendants County of Lehigh, Rentko and Steckel's Motion to Dismiss (Doc. #19); and, the Motion of defendants Lowery and Buchanan for Summary Judgment (Doc. #11), and plaintiff's response thereto, consistent with the foregoing, **IT IS HEREBY ORDERED** that said Motions are **GRANTED** and the above action is **DISMISSED**.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**